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EXAMINER

D'AGOSTINO, PAUL ANTHONY

ART UNIT	PAPER NUMBER
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3714

NOTIFICATION DATE	DELIVERY MODE
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08/02/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/766,656	Applicant(s) WRIGHT, ROBERT J.	
	Examiner Paul A. D'Agostino	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/25/2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,8-14,17,18,20-25,35-45,47-53,56,58-64,70,71 and 74-77 is/are pending in the application.
- 4a) Of the above claim(s) 66 and 67 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,8-14,17,18,20-25,35-45,47-53,56,58-64,70,71,74 and 75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 76 and 77 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This responds to Applicant's Arguments/Remarks filed 11/25/2009. Claims 1, 5, 10-12, 14, 17, 21-24, 35,-36, 40-43, 45, 47-48, 52-53, 56, 59-62, 64, 70-71, and 74-75 have been amended. Claims 2-4, 6-7, 15-16, 19, 26-34, 46, 54-55, 57, 65-69, and 72-73 have been cancelled. Claims 76-77 have been newly added. Claims 1, 5, 8-14, 17-18, 20-25, 35-45, 47-53, 56, 58-64, 70-71 and 74-77 are now pending in this Application.

Response to Amendments

1. Applicant has amended or cancelled the claims to remedy minor informalities. Thus, the objection of Claims 10-12, 22-24, 45, 53, and 60-62 is withdrawn.
2. Applicant has amended and clarified Claims 5, 17, 56, and 70. Thus, the rejection of the claims under 35 U.S.C. § 112, second paragraph is withdrawn.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1, 5, 8-9, 12-13, 53, 56, 58-59, 62-64, 70 and 76 are rejected under 35 USC 101 as being directed to non-statutory subject matter because these are method or process claims that do not transform underlying subject matter (such as an article or materials) to a different state or thing, nor are they tied to another statutory class (such

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as a particular machine). See Diamond v. Diehr, 450 U.S. 175, 184 (1981) (quoting Benson, 409 U.S. at 70); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978) (citing Cochrane v. Deener, 94 U.S. 780, 787-88 (1876)). See also In re Bilski (Fed Cir, 2007-1130, 10/30/2008) where the Fed. Cir. held that method claims must pass the "machine-or-transformation test" in order to be eligible for patent protection under 35 USC 101. The method claims recite a method of assuming risk for a lottery operator offering a predetermined fixed jackpot through the sale of a guarantee (e.g., insurance) wherein the lottery operator pays for a portion of the prize from funds collected through ticket sales and an guarantor (insurer other than the lottery) covers the funding difference or shortfall when necessary. In applying the test, Examiner determines that there is no transformation of underlying subject matter. The method outlines parties and terms to an agreement. Examiner also determines that the method does not ties to another statutory class. The lottery operator is a field of use for this gap insurance as is gap insurance for automobiles and health care. The recitations directed to a guarantee system and a receiving system are extra-solution instrumentalities inherent in the dealings of insurance for the control and exchange of papers and money which do not further limit the scope of the claims. Alternatively, and to advance prosecution, Examiner directs Applicant to Claims 10 or 11, for example, which provide satisfactory ties to play of a guaranteed lottery game on a video lottery terminal or computing device connected to the Internet. Other options to Applicant's liking will be considered, however either of these apparati when incorporated into all of the independent method claims shall overcome the rejection. Appropriate attention is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 8-9, 12, 18, 24, 20-21, 36, 58-59, and 62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949).

8. In the present instance, Claims 1, 14, and 53 recite the broad recitation of a lottery operator, and the Claims 8, 20, and 58 also recite the guarantee is effectuated in a jurisdiction which is the narrower statement of the range/limitation. Lotteries are regulated by the states and inherently jurisdictional. Lotteries can be uni- and multi-

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jurisdictional. In light of Applicant's specification, the guarantee is co-extensive in scope with the legal limits of a lottery. Thus, the dependent claims are merely exemplary of the lottery itself or a required feature of the claim and as such are not required.

9. Claims 1, 14, and 53 recite the narrow recitation of a guarantee for the difference between the fixed jackpot and ticket sales, and the Claims 9, 21, and 59 also recite the guarantee assumes the risk of the lottery (Claim 9) and the lottery operator (Claims 21 and 59) which is a broader statement of the range/limitation. The scope of the guarantee in the dependent claims fails to further limit the independent claims as the coverage of the guarantee expands from covering the jackpot shortfall to the lottery operator and the lottery overall.

10. Claims 1, 14, 35, and 53 recite the broad recitation of a purchase of a lottery ticket for a lottery game, and Claims 12, 24, 36, and 62 recite the purchase at a point of sale location which is a narrower statement of the range/limitation. The location of an exchange of payment for a lottery ticket is a point of sale location which includes retail locations also referred to as point of sale locations. Thus, the dependent claims are merely exemplary of the lottery itself of a required feature of a lottery and as such are not required.

Claim Rejections - 35 USC § 102/103

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claims 1, 5, 8-14, 17-18, 20-25, 53, 56, 58-64, 70-71 and 74-75 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent Pub. No. 2003/0080507 to Higginson (Higginson) in view of U.S Patent Pub. No. 2004/0147308 to Walker et al. (Walker) and "Lottery firms seek cover for jackpots" by Freny Patel dated July 4, 2003 (Patel) of record.

In Reference to Claims 1, 9, 13-14, 21, 25

Higginson discloses a method of assuming risk for a lottery operator of games of

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chance and more particularly “lottery-style” games ([0003]) wherein the system and method provide for covering the risk for the lottery operator wherein “Since the bonus payout, at whatever level, if not covered, could adversely impact the profitability of the game for the casino, it is assumed that the operator would take out insurance to cover the risk of a payout in excess of the minimum Grand Prize guaranteed by the casino.” [0024]).

Higginson discloses:

providing, with a prize guarantee system separate from the lottery operator (Higginson discloses obtaining separate insurance in contrast to what the “risk in excess ... guaranteed by the casino” [0024]), a guarantee of payment of a predetermined fixed jackpot prize in a lottery game (Higginson discloses that offering Gran Prizes serves as an inducement [0025] and to secure the ability to offer such awards by obtaining insurance to cover the difference in excess of what the casino can cover [0024] wherein both pari-mutuel system of variable jackpots and set of fixed amount for all prize levels, common in lottery games [0009] can be insured; and discloses an “Accumulation Lotto” embodiment [0030] which includes Grand Prizes [0031] which are pari-mutuel [0032] and, knowing the lure of fixed prizes, discloses “preset prizes” [0035]. Further, “These prizes can be awarded on a progressive basis, based upon the total amount that ends up in the separate pool or they may be preset amounts that are decided at the start of the annual game. An example of preset prizes for the Third Tier, Grad Prize, level is: \$25,000,000 grand prize ...” [0037]),

wherein the jackpot is funded by a first percentage of lottery ticket sales (Higginson discloses distribution according the local rules of 65% of the wager based on monies collected from "four million \$1 entries sold per draw" [0032] and of how that pool distribution funds the various prize levels [0033-0037]; this is the amount covered by the casino referred to in [0024]),

wherein the jackpot prize is indicated and the guarantee occurs prior to lottery ticket sales such that the jackpot is not completely funded prior to initiation of the lottery game (Higginson discloses that "It is extremely important for the lottery operator to increase sales during these periods. The accumulation variation to the traditional lottery has the potential to achieve increases in sales during times of lower traditional jackpots. This is because the accumulation option gives players a chance to win the guaranteed accumulation prizes that are completely independent of the size of the traditional jackpot and are set at levels to encourage participation no matter how small the traditional jackpot." [0042], the jackpot having "preset amounts that are decided at the start of the annual game ...Grand Prize ...\$25,000,000 ..." [0037], wherein the prize is covered by casino funds [0024] with shortfalls {difference} in funding from the sale of lottery tickets [0030, 0042] covered by insurance [0024] such that players a guaranteed to be paid the announced jackpots ""unlike most casino games, not only the Qualifying First Tier prizes are guaranteed, but the monthly ...end-of-game ...bonus and progressive ...are guaranteed, and will be paid to somebody in accordance with the schedule" [0037, 0026]; see also minimum Grad Prize guaranteed by the casino [0024]),

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wherein the guarantee guarantees the difference between the jackpot and first percentage lottery ticket sales if the sales is less than the jackpot amount (ticket sales fund the variable and fixed preset jackpots [0032-0035, 0037] and insurance guarantees to cover the difference between the jackpots the casino can cover through these sales and the announced preset jackpots wherein "Since the bonus payout at whatever level, if not covered, could adversely impact the profitability of the game for the casino, it is assumed that the operator would take out insurance to cover the risk of a payout in excess of the minimum Grand Prize guaranteed by the casino" [0024]); and

wherein the guarantee is in exchange for a stipulation (Higginson discloses insurance covers the excess of the minimum Grand prize guaranteed "less the cost of risk premiums for insurance to cover any bonus payouts to the Grand Prize Winner" (emphasis in original) [0024]).

Higginson discloses that the insurance helps to cover those prizes in excess of the minimum guaranteed by the casino. Higgins discloses the first percentage of tickets sales covers the jackpots as these jackpots are funded as a percentage of the ticket sales ([0023]). Further Higginson discloses that for an additional wager (a second percentage distinct from the first percentage) a player is able to extend the life of their ticket to compete for the higher Grand Prizes ([0042-0043]). Examiner reasonably believes these incremental funds are fund in whole of in part the insurance premiums for the difference ([0024-0026]) in light off the fact that the casino is able to cover the lower prizes with the First Tier prizes through the 65% of the total wager.

However, if Applicant disagrees with Examiner's interpretation of Higginson

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wherein the second percentage, distinct from the first percentage, funds the guarantee, and, as explained earlier, that the separate prize guarantee system and receiving system is inherently disclosed when referring the separate insurer, then Applicant is directed to Walker and Patel.

Walker discloses a system and method of communicating game information (Title) wherein players at gaming machines establish contracts for play of games to include lotteries ([0046]). Walker teaches that a separate and distinct portion of the wager is used to cover the purchase of insurance to pay off large jackpot awards, whether these awards are variable or fixed is immaterial to the teaching relied upon by Examiner, wherein "Therefore, where multiple people have stakes in a single outcome, the casino might purchase insurance against a jackpot or other large outcome occurring. For instance, the casino might pay three cents per person per spin as an insurance premium to an insurer. Then, should the outcome turn out to be a jackpot, the insurer would cover at least part of the cost of paying the jackpot to each of Joe, Sam, Linda, Chris, and Bob" ([0408]). Walker's provides this system and method of insurance to cover a shortfall or difference between the jackpot and amount the casino is able to cover with the premiums funded by a percentage of the sales wherein a sale is a handle pull of the embodiment cited and is a ticket sale if applied to a lottery embodiment. Walker provides this system and method in order to insure itself against "a jackpot or large outcome occurring" ([0408]).

It would have been obvious to one of ordinary skill in the art at the time the

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invention was made to employ the second distinct percentage of sales to fund an insurance premium {stipulation} in exchange for the insurance guarantee as taught by Walker into the insurance of fixed preset jackpots of Higginson in order to pay for the premiums to secure insurance which guards against jackpots or large outcomes occurring.

The purchase of separate insurance is known, however, if Applicant disagrees with Examiner's inherency argument that Higginson impliedly discloses a guarantee system and receiving system separate from the operator, Applicant is directed to Patel.

Patel teaches of the business of insuring lotteries in exchange for providing prize coverage. Patel can be read to ensure the prize altogether but this is not why Patel is important. Patel stands for the fact that insurers insure casinos from jackpot loses. They represent the guarantee system and through the collection of premiums, represent the receiving system. Patel teaches wherein an on-line lottery business is becoming a local industry that "want[s] to take insurance covers [sic] against jackpot prizes" (Page 1 Lines 3-4) wherein probability games ("online lottery" Page 1 Line 1; and "gambling games in casinos" Page 2 Lines 1-2) have their winnings insured (Title), the system and method of assuming risk for a lottery, comprising, {providing} a guarantee of payment of a {jackpot} prize in a lottery ("insurance companies are equally eager to write this lottery business...quotes offered" Page 1 Lines 3-5 and "whereby winnings will be paid by the insurer and not by them" Page 1 Line 9; and "jackpot" (Page 1 Line 12), wherein the guarantee is in exchange for a stipulation of a percentage of {future} ticket sales revenue in the lottery ("Lottery insurance, better known as prize indemnity insurance,

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essentially means that a company pays a premium to an insurer, based on the number of tickets sold” Page 1 Lines 10-11), wherein “winnings will be paid by the insurer” (Page 1 Line 9) in response to the acceptance of a “quotation” by a corporate (Page 1 Line 19)); and {receiving} the percentage of the ticket sales in the lottery (“company pays a premium to an insurer (Page 1 Line 10). Patel provides this system and method in order to provide “risk cover” (Page 1 Line 9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the guarantee system and receiving system as taught by Patel into the teachings of Higginson as modified by Walker in order to provide risk cover to casinos against large jackpot awards in excess of what the casino can cover by itself.

In Reference to Claim 5 and 17

Higginson discloses First, Second, and Third Tier prizes ([0035-0037]).

In Reference to Claims 8 and 20

Higginson discloses “state lotteries” ([0030]) and “local rules” (0032]).

In Reference to Claims 10-11 and 22-23

Walker teaches that the games can be player on a video terminal (Figs. 1 and 2B) and Patel discloses wherein the lottery can be played on a computing device operably connected to the Internet (“online lottery” (Page 1 Line 2) and “gaming games

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in casinos" (Page 2 Lines 1-2)). For motivation to combine see rejection of Claims 1 and 14.

In Reference to Claims 12 and 24

Higginson discloses for the Accumulation Lottery embodiment "applying the invention to a standard lottery game ... Players would purchase lottery tickets in the same manner currently used by state lotteries" ([0030]). Examiner reasonably believes this implicitly discloses point of sale {retail} locations as well as sales in casinos at booths, terminals, gaming stations with gaming "establishments" [0011].

In Reference to Claim 18

Higginson discloses that the guarantee guarantees the prize will be paid even if the ticket sales are not greater in size than the payment of the prize (Higginson discloses that the reason for obtaining the insurance is to be able to offer the large prizes as inducement for players to continue to play and that if the large reset jackpots are won, players will be paid because players can "win the guaranteed accumulation prizes" when the prizes are at preset [0035] level above "traditional jackpot[s]" [0042]).

In Reference to Claims 53, 56, 58-63

See rejection of Claims 14, 17, 20, and 21-25. by Patel and Lowell. Further, Examiner takes Official Notice that lotteries are advertised in order to generate sufficient sales and profit.

In Reference to Claims 64, 70-71, and 74-75

See rejection of Claims 1 and 5.

15. Claims 35-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Pub. No. 2004/0185931 to Lowell et al. (Lowell) in view of U.S. Patent Pub. No. 2002/0120476 to Labelle et al. (Labelle) and Higginson.

In Reference to Claim 35-39

Lowell discloses an enhanced gaming system and method (Figs. 1 and 18) of fixed prize lottery games (Fig. 5) wherein the system is in communication with an underwriter [0076] to provide the lottery games (Fig. 5 [0047, 0061]) via a secure gaming system (Fig. 1 and [0076]) including purchase of games at POS units ([0019, 0224]) wherein central gaming servers 695, 696 (Figs. 5 and 6) formulate games {lottery game creation modules} for distribution ([0296]) over the network ([0295]). The gaming system also communicates “invoices on a weekly, monthly or other time increment” to include “date of sale, quantity of eTabs sold, cost per eTab sold, serial number of each eTab deal and the name and address of the purchaser” to the underwriter ([0076]). This communication occurs following an exchange of authentication certificates {instructions} over the system of Figs. 1 and 18-19 via sending {guarantee transmitting module} and receiving {guarantee receiving module} software modules 1810 and 1820, respectively, between the “Manufacturer or Implementor (Underwriter) Central Office” and the “Gaming Hall” of Fig. 18 via Com 160 of Fig. 1 (See also [0211-0214]). Lowell provides

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this system and method in order to provide a secure lottery network (local networks ({0295}), WAN (Fig. 6) and Internet (0191). and to “properly bill the gaming system operator” [0076] over the “network” (Fig. 1).

However, Lowell is silent as to the particulars of transmitting and receiving the guarantee of payment and of the particulars of the guarantee itself.

Labelle teaches of dispensing insurance through a network (Fig. 1) wherein in “Customers” 102 acquire insurance from “Insurance Company” 111 via a “General Agent” 160. The system (Fig. 1 “system” 100, [0025]) includes communications over a network (local, WAN, LAN [0026]) to server 150 and database 152 (Fig. 1). “Application programs” {guarantee transmission module} stored in memory of the server 150 executes the process of Fig. 2 wherein upon the election of the customer to purchase coverage (Fig. 2 step 214), the system distributes a “proof of coverage” (Fig. 2 step 219) to the customer in exchange for “payment” (Fig. 2 step 216; see also [0013-0014; 0035; 0039; 0047]). Labelle provides this system and method in order to make antiquated means of providing insurance amenable to delivery of insurance online ([0006]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide proof of coverage over a network as taught by Labelle to the gaming system as taught by Lowell so that Lowell can more efficiently shop for the best rates online and receive confirmation of coverage.

Higginson discloses a guarantee equivalent to Applicant's claimed invention (See rejection of Claims 1 and 14) and wherein Higginson as modified by Patel leverages the

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guarantee to lure participants by offering the significantly larger “guaranteed accumulation prizes” in exchange for the payment of the insurance premiums ([0024-0027; 0035-0037; 0042-0043]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the guarantee as taught by Higginson into the teachings of Lowell as modified by Labelle in order to increase participation and revenues in the lottery by offering guaranteed large jackpot prizes.

In Reference to Claim 40-41

Lowell as modified by Labelle and Higginson teaches of a risk module wherein the gaming system verifies winners [0070, 0151] and cashes out winners [0223] and sends data on games to the underwriter so the gaming operator can be properly billed ([0076]). However, Lowell is no explicit wherein the risk module performs the determining if the sales are less than the fixed jackpot prize and if so, transmits a payment request through the network. Examiner assumes that these claims are directed to the insurer and not to paying off the player.

Labelle further discloses a system and method (Fig. 1) wherein customers report data to the insurance company servers ([0047]) and claims are verified and settlement offers of payments made via server 150 (Fig. 2 step 228 and [0054]) in order to “allow policyholders to input information more quickly and easily” ([0054]) and to save time over antiquated methods of a real adjuster and data collection to settle the claims ([0006, 0054]).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the risk determination and payment request processing as taught by Labelle into the teachings of Lowell as modified by Labelle and Higginson in order to provide online claims processing of lottery insurance which saves time for the casino policyholder.

In Reference to Claims 42

Lowell as modified by Labelle and Higginson discloses wherein stipulation {premium} of payment is sent to the insurer (“underwriter can properly bill the gaming operator” [0076]).

16. Claims 43-45 and 47-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lowell, Labelle, Higginson further in view of Walker.

In Reference to Claims 43-44

Lowell as modified by Labelle and Higginson discloses a system substantially equivalent to Applicant's claimed invention. Additionally, Lowell discloses wherein stipulation {premium} of payment is sent to the insurer (“underwriter can properly bill the gaming operator” [0076]) via the network as disclosed by Lowell in view of Labelle. Labelle further discloses payment receipt module (Fig. 2 step 216 “Receive Payment”) wherein the payment receipt module is operatively connected to the guarantee transmission module (Fig. 2 all steps are operatively connect as operations of the server

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150 to fully manage policyholder accounts as the server “may be implemented with one or more various types of computer software or programs ([0025, 0029]). For motivation to combine see rejection of Claim 35.

In Reference to Claims 45, 47-52

See rejection of Claims 1 and 35-44 and wherein Lowell discloses creation of games {which follow a set of game rules} of skill/chance [0047], for example, “poker”, “keno”, “bingo” [0071]; the game creation module is housed in the gaming machine (COM Unit 160 which “can be used to distribute and play games of chance” [0109] such that the game creation can reasonably be interpreted as being created on a server and distributed to the games in the network; the games being wagering games implicitly initiated upon the insertion of a coin or credit similar to the purchase of tickets for the lottery ticket embodiments).

Election/Restrictions

17. Newly submitted Claims 76 and 77 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the original claims were directed to fixed jackpots wherein Claims 76 and 77 are directed to progressive jackpots (See Interview Summary filed 11/04/2009).

18. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, Claims 76-77 are withdrawn from consideration

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as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Arguments

19. Applicant argues (see Applicant's Arguments/Remarks pages 15-20) that Patel fails to disclose Applicant's claimed invention as amended. Examiner concurs that Patel can be reasonably interpreted to cover a lottery jackpot and not the difference as claimed. Applicant is directed to Higginson which discloses obtaining insurance for amounts over what the lottery operator is internally guaranteeing and has responded to Applicant's arguments as part of the rejection of the claims.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is provided in the Notice of References Cited.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. D'Agostino whose telephone number is (571) 270-1992. The examiner can normally be reached on Monday - Friday, 7:30 a.m. - 5:00 p.m..

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on (571) 272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

23. Information regarding the status of an application may be obtained from the

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Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul A. D'Agostino/
Examiner, Art Unit 3714